Supreme Court of the United States

OCTOBER TERM, 1941.

No. 914

THE STATE TAX COMMISSION OF UTAH,

Petitioner,

against

MALCOLM P. ALDRICH and MARY S. HARKNESS, Administrators with the will annexed of the Estate of Edward S. Harkness, Deceased,

Respondents.

BRIEF FOR RESPONDENTS.

MELBER CHAMBERS,
HENRY G. GRAY,
Counsel for Respondents.

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STATUTE CITED.

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BRIEF FOR RESPONDENTS.

This brief is submitted in opposition to a petition for a writ of certiorari to review the decision of the Supreme Court of Utah holding that the shares of stock of the Union Pacific Railroad Company, a Utah corporation, owned at the time of his death by Edward S. Harkness, a resident of New York, are not subject to the Utah Estate Tax.

The Facts.

There is no issue of fact in this case.

The statement of facts contained in the petition is correct as far as it goes, but it is incomplete. Only the additional facts will be stated here.

The decedent was never domiciled in Utah and never carried on any business in that state (R. 3).

The certificates representing the shares of Union Pacific Stock in question were always kept in New York and were never used in connection with any business carried on by anyone in Utah (R. 3).

While the shares of stock were registered in the decedent's name, as stated in the petition, the books of the Union Pacific Railroad Company which contained the record of that ownership were at all times kept in New York. Indeed, the only stock books and stock records kept by the Railroad Company had been located in New York for many years. In that state was the only office for the transfer of its shares of stock (R. 2). It has, of course, been within the power of the Railroad Company to keep stock books in Utah and record transfers there, but it has not done so (R. 2, 14).

Although the Union Pacific is a Utah corporation and holds its annual meeting of stockholders there, its executive offices are located in New York and its Board of Directors meets there. Only a very small portion of its property is in Utah; less than ten per cent. of its revenue comes from business transacted in Utah; less than nine per cent. of its trackage is in that state (R. 2).

In connection with the credit allowed by the State of New York against the estate tax paid to it, the New York tax authorities have taken the position that a tax such as the one here in question is not constitutionally valid and that consequently no credit is allowable against the New York tax (R. 4).

The Question Presented.

The question presented for review is whether upon the facts in this case the State of Utah could, without violation of the Federal Constitution, tax the transfer of the shares of stock in the Union Pacific Railroad Company, a Utah corporation, resulting from the death of the shareholder, Edward S. Harkness, who died a resident of New York.

The Reasons Relied On By Petitioner For Allowance of Writ.

In its petition the petitioner has assigned the following reasons for the allowance of a writ of certiorari:

First, that the decision of the Utah Supreme Court is "not in accord with the applicable decisions of this Court";

Second, that the Utah Supreme Court in its decision has misconstrued the Constitution of the United States and the applicable decisions of this Court;

Third, that the constitutional question presented is of general importance and concern to the states and to taxpayers and should be decided by this Court.

From the second reason must be eliminated the suggestion that the Utah Supreme Court has misconstrued the Constitution of the United States. That court's opinion makes it plain that no interpretation of the Constitution was attempted. Rather, the decision of this Court in *First National Bank of Boston* v. *Maine*, 284 U. S. 312 was held to control (R. 25).

With that portion of the second reason gone, the remaining reasons are reduced to one. Petitioner in substance urges that in deciding the important question presented, the Utah Supreme Court has failed to interpret properly the applicable decisions of this Court.

We submit that it is perfectly plain that a correct interpretation of this Court's decisions has been made by the Utah Supreme Court and that there is no reason for the granting of a writ of certiorari.

POINT I.

The Utah Supreme Court has correctly held that the question here presented was decided by this Court in First National Bank of Boston *v.* Maine.

The identical question presented here was decided by this Court in *First National Bank of Boston* v. *Maine*, 284 U. S. 312.

In that case an appeal was taken by the executors of an estate from a judgment of the Supreme Judicial Court of Maine sustaining a succession tax imposed by the State of Maine upon shares of stock in a Maine corporation owned by a non-resident decedent.

The decedent died testate, a resident of Massachusetts. The greater portion of his estate consisted of shares of stock in the Great Northern Paper Company, a Maine corporation, which had most of its assets in Maine. His will was probated in Massachusetts where an inheritance tax of $32,000 was assessed and paid upon the net estate. Ancillary administration was taken out in Maine and an inheritance tax of $62,000 was assessed there upon the transfer of the shares of the Great Northern Paper Company with a credit upon this amount for the tax paid in Massachusetts. Upon these agreed facts the State of Maine brought an action of debt which was referred for final decision to the Supreme Judicial Court of that state, sitting as a law court.

Revised Statutes Maine, c. 69, § 1, then in force, provided in part

> "All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, * * * shall be subject

to an inheritance tax for the use of the state as hereinafter provided * * * ".

Section 25 of the same chapter in substance provided that the tax on transfers of stock owned by non-residents and taxable under the statute should be paid at the time of the transfer.

The Maine court held that the shares of stock were "within its [that state's] jurisdiction and there subject to an inheritance tax * * * regardless of whether the certificates of stock were at the time of the death in the state of the domicile or in the taxing state", without thereby infringing the due process clause of the Fourteenth Amendment.

This Court reversed the decision of the Maine court and held the tax to be unconstitutional. In doing so it decided first, that only one state could, within the provisions of the due process clause of the Fourteenth Amendment, assess a tax upon the transfer by death of the shares of stock in question and second, that the state with the requisite jurisdiction to impose the tax was the state of the decedent's domicile.

This Court first reviewed its decisions in which the jurisdiction of the states to tax the inheritance of property had been defined. It was pointed out that it had long ago been established that real property is subject to an inheritance tax only in the state in which it is located. Later it had become settled that the same rule applied to tangible personal property (*Frick* v. *Pennsylvania*, 268 U. S. 473). Then, in three decisions in 1930 the principle of single taxation had been applied to three kinds of intangibles: bonds, notes and credits. (*Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204; *Baldwin* v. *Missouri*, 281 U. S. 586; *Beidler* v. *South Carolina Tax Comm.*, 282 U. S. 1.)

With that prelude this Court proceeded to hold that this principle is broader than the applications thus far made of it and that it governed the taxation of the in-

inheritance of shares of stock as well. The basis for that conclusion was this (p. 327):

> "A transfer from the dead to the living of any specific property is an event single in character and is effected under the laws, and occurs within the limits, of a particular state; and it is unreasonable, and incompatible with a sound construction of the due process of law clause of the Fourteenth Amendment, to hold that jurisdiction to tax that event may be distributed among a number of states."

The one state possessing the jurisdiction to tax was decided to be the domicile of the decedent, for, (p. 330):

> "* * * Practical considerations of wisdom, convenience and justice alike dictate the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile; and these considerations are greatly fortified by the fact that a large majority of the states have adopted that rule by their reciprocal inheritance tax statutes. In some states, indeed, the rule has been declared independently of such reciprocal statutes. The requirements of due process of law accord with this view."

That was the first time the question had been squarely presented to this Court. In none of the three earlier cases cited by the petitioner in the case at bar (*Maxwell v. Bugbee*, 250 U. S. 525; *Frick* v. *Pennsylvania*, 268 U. S. 473; *Rhode Island Hospital Trust Company* v. *Doughton*, 270 U. S. 69) had the power of the state of incorporation to tax been questioned by either party and it had been simply assumed to exist by the court.

POINT II.

The decision in First National Bank of Boston *v.* Maine is eminently sound.

That decision is harmonious with three different approaches to the problem, which have appeared in decisions of this Court. First, it supports the doctrine of the single

tax. Second, it conforms with the application of the maxim, *mobilia sequuntur personam*. Third, it embraces the point of view that we must look at the thing to be taxed and then permit its taxation in the place where it is afforded some benefit or protection.

Application of the decision to the case at bar demonstrates its soundness.

Of course, the shares of stock owned by Mr. Harkness were created and continued in existence by the law of Utah. Sensibly it could be argued, then, that the shares are subject to taxation by that State—a property tax laid upon them could be justified. *Corry* v. *Baltimore*, 196 U. S. 466; *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 506.

We are now concerned, not with a property tax imposed upon the shares by Utah, but rather a tax aimed at a transfer of the shares resulting from the death of the owner. That is an entirely different thing. A state might well create and give protection to intangible property rights and yet have nothing to do with their transfer upon the death of the owner. That is precisely what has happened in this case.

The decedent here died a resident of New York. Neither he nor his shares ever "resided" in Utah or were ever connected with any business in Utah. His will was probated in New York. The interests of his beneficiaries were determined by the law of New York. There the succession took place.

As a practical matter, too, the shares are transferable on the books of the company kept in New York. No transfer books are maintained in Utah. Thus the transfer, the thing sought to be taxed by Utah, in all its aspects, was effected in New York by the death of one domiciled there.

Once created, the shares had acquired the incident of transferability on the death of the owner. That incident could not thereafter be impaired by Utah. Its transfer on the owner's death would take place wherever he was domiciled at the time of his death and would be effected by the law of that place, unaided by the law of Utah.

POINT III.

The decision in First National Bank of Boston *v.* Maine stands unimpaired by later decisions of this Court.

1. *First National Bank of Boston* v. *Maine* has been neither overruled nor disavowed in any subsequent decision of this Court.

2. On the contrary, it has been repeatedly referred to as setting forth the law of the land as to the jurisdiction of the states to impose death taxes on shares of stock.

The case has been cited by this Court in the following cases:

Lawrence v. *State Tax Comm.*, 286 U. S. 276;
Burnet v. *Brooks*, 288 U. S. 378;
City Bank Farmers Trust Co. v. *Schnader*, 291 U. S. 24, 293 U. S. 112;
Senior v. *Braden*, 295 U. S. 422;
Wheeling Steel Corp. v. *Fox*, 298 U. S. 193;
New York ex rel. Whitney v. *Graves*, 299 U. S. 366;
New York ex rel. Cohn v. *Graves*, 300 U. S. 308;
Worcester County Trust Co. v. *Riley*, 302 U. S. 292;
Colorado Bank v. *Commissioner*, 305 U. S. 23;
Curry v. *McCanless*, 307 U. S. 357.

In *Senior* v. *Braden*, *supra*, while distinguishing a case this Court said (p. 432):

> "* * * The opinion accepted and followed the doctrine of *Blackstone* v. *Miller*, 188 U. S. 189, and *Fidelity & Columbia Trust Co.* v. *Louisville*, 245 U. S. 54. Those cases were disapproved by *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. They are not in harmony with *Safe Deposit & Trust Co.* v. *Vir-*

ginia, 280 U. S. 83, and views now accepted here in respect of double taxation. See *Baldwin* v. *Missouri*, 281 U. S. 586; *Beidler* v. *South Carolina Tax Comm'n.*, 282 U. S. 1; *First National Bank* v. *Maine*, 284 U. S. 312."

In *Worcester County Trust Co.* v. *Riley, supra*, the present Chief Justice, writing for a unanimous court said (p. 98):

"* * * This Court has held that state statutes, construed to impose death taxes upon the intangibles of decedents domiciled elsewhere, infringe the Fourteenth Amendment, and it has accordingly reversed judgments of state courts enforcing such liability. *First National Bank* v. *Maine, supra; Farmers Loan & Trust Co.* v. *Minnesota, supra.*"

In *Curry* v. *McCanless*, 307 U. S. 357 and *Graves* v. *Elliott*, 307 U. S. 383, the majority of this Court in two five-to-four decisions held that an inheritance tax might be imposed on intangibles by a state in which a decedent had placed them in a trust, as well as by the state of the decedent's domicile. Thus it was decided that not every case would permit the application of the single tax rule. The minority of the court disagreed and held that the state of domicile must yield to the state of business situs.

However, in writing for the majority of the court in *Curry* v. *McCanless*, Chief Justice Stone again referred to the authority of the *Maine* case and, while declining to apply the single tax rule to the circumstances of the case before the court, he reaffirmed the application of the rule made in the *Maine* case, in *Farmers Loan & Trust Co.* v. *Minnesota, supra*, and in *Baldwin* v. *Missouri, supra*. He said (p. 363):

"The doctrine, of recent origin, that the Fourteenth Amendment precludes the taxation of any interest in the same intangible in more than one state has received support to the limited extent that it was applied in *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204; *Baldwin* v. *Missouri*, 281 U. S. 586;

First National Bank v. *Maine*, 284 U. S. 312. Still more recently this Court has declined to give it completely logical application. It has never been pressed to the extreme now urged upon us, and we think that neither reason nor authority requires its acceptance in the circumstances of the present case."

3. The decisions in the *Curry* and *Graves* trust cases are sharply distinguishable from the case at bar.

Mr. Harkness kept the certificates at his domicile; he never gave them a business or other situs elsewhere. Furthermore, and more important, he retained in himself the full title and ownership in the shares. He did not transfer some interest in them, legal or equitable, to another in some other state.

In *Curry* v. *McCanless* and *Graves* v. *Elliott* the decedents created trusts and transferred to trustees in a state other than the domicile the legal title and control of the securities. They thus voluntarily subjected the property and its succession on their death to the jurisdiction of that other state. Those cases are akin to the ones in which intangibles are used in connection with a business elsewhere than at the owner's domicile—cases of business situs. But such elements are absent from the case at bar.

4. There is nothing in principle or in the recent decisions of this Court calling for a reconsideration of the decision in the *Maine* case.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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